



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

National Policy Memorandum

Office of Trust Services
Division of Real Estate Services

Number: NPM-TRUS-44 A2

Effective: 4/4/2024

Expires: 4/4/2025

Title: Streamlining the Rights-of-Way and Business Lease Application Processes for Federally Funded Tribal Broadband Infrastructure Projects – Amendment 2

1. Purpose

The purpose of this memorandum is to extend NPM-TRUS-44 A1: Streamlining the Rights-of-Way (ROW) and Business Lease Application Processes for Federally Funded Tribal Broadband Infrastructure Projects – Amendment 1, issued on April 18, 2023, for one additional year. This memorandum establishes Bureau of Indian Affairs (BIA) comprehensive policy framework based on the BIA's regulations for the efficient and effective processing of Rights-of-Way (ROWs) and Business Lease applications to provide broadband access to all areas within our jurisdiction with a focus on rural unserved, and underserved communities.

2. Scope

This policy applies to all BIA programs, offices, regions, and agencies involved in the ROW and Business Lease processes for Tribal broadband infrastructure projects.

Background:

Many Tribes have entered contract and compact agreements with the BIA under the Indian Self-Determination and Education Assistance Act (ISDEAA), Public Law 93-638, 25 U.S.C. 301 et seq., as amended, to exercise self-determination and Tribal sovereignty.

Under ISDEAA, a Tribal organization means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body to be served by such organization provided where a contract or compact is entered into, or a grant is made, to an organization to perform services benefitting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the entering into or making of such contract, compact, or grant.

3. Policy and Procedures

It is the BIA's policy to comply with all Federal laws and regulations as well as Department of the Interior (DOI) policies regarding the processing of ROW and lease applications for Tribal infrastructure projects.

If an application package is received by the BIA, a review of the package must be made within five (5) business days as to whether the package is complete or not. Upon completion of the review, BIA will provide a written notice to the applicant either that the application is complete or identifying the missing application supporting documents.

BIA will implement the following additional steps to simplify and streamline the processing of ROW and lease applications that are part of, or related to, infrastructure:

A. ROW and Business Lease Applications on Tribal Lands Where Tribe Owns 100% of the Tract:

- 1) If the Tribe, or a Tribal utility, is the applicant, the Tribe does not need BIA approval of a ROW on Tribal land. 25 CFR § 169.4(b)(1) and 169.4(b)(3)(iii).
 - a) For leases, an independent legal entity owned and operated by a Tribe may have to obtain a lease from owners of the land before taking possession of the land (25 CFR § 162.005(a)(1)).
 - b) The Tribe, as an Indian landowner who owns 100 percent of the trust or restricted interests in a tract, does not need a lease to possess Tribal land (25 CFR § 162.005(b)(1)). As a result of the Land Buy Back Program, there may be allotted tracts of land where the Tribe owns 100 percent of the trust interests in the tract.
 - c) The ROW or lease application, grant or lease document, map of definite location and any other Tribal broadband use agreements for project development with states and other Federal agency(ies) must be filed with the BIA for recording in the system of record, the Trust Asset and Accounting Management System (TAAMS) within 30 days of grant or approval.
 - d) A lease is not needed to possess Indian land if the applicant is a 25 U.S.C. 477 corporate entity that manages or has the power to manage the Tribal land directly under a federal charter or under a Tribal authorization (not under a lease from the Indian Tribe).
 - e) A ROW or lease is not needed if the applicant has entered into a contract or agreement that encumbers Tribal land under 25 U.S.C. 81.
- 2) If the applicant is a third party, including but not limited to a Tribal consortium or a Federal agency:
 - a) The Tribe may exercise all the regulatory permissions, including negotiating for any payment amount, and asking the Secretary to waive the valuation and bond and insurance requirements.

- b) For a ROW crossing multiple Tribal lands, the applicant **must obtain Tribal consent from each Tribe whose land the ROW will be crossing**, in the form of a Tribal authorization and a written agreement with the Tribe, if the Tribe so requires, to a grant of right-of-way across Tribal land. The consent document may impose restrictions or conditions; any restrictions or conditions automatically become conditions and restrictions in the grant. (25 CFR § 169.107(a)). The ROW grant could be utilized as one grant for all the tracts traversed by the ROW (25 CFR § 169.124(d)).
- c) A decision on a lease or ROW application must occur 60 days after making the determination that the application is complete.
- d) The ROW Tribal authorization, grant or lease document, map of definite location and any Tribal use agreement(s) connected to Tribal infrastructure and/or broadband project development agreements with states and other Federal agency(ies) must be filed with the BIA for recording in the official system of record, the Trust Asset and Accounting Management System (TAAMS) within 30 days of approval or grant.

B. ROW and Business Lease Applications for Allotted Lands

- 1) If the applicant is a third party, including but not limited to a Tribe, Tribal utility, Tribal consortium, or Federal agency:
 - a) The individual Indian owners may negotiate for any payment amount and may waive the valuation requirement.
 - b) The ROW may be approved for the negotiated amount per 25 CFR §169.112 and Business Leases per 25 CFR §162.421.
 - c) BIA will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the requisite consent based on BIA records on the date the application is submitted to the BIA (25 CFR § 169.107(c) and 25 CFR § 162.012(a)(5)).
 - d) If the Tribe already owns the majority of the interests, consent of the other fractional owners is not required, but the Tribe must notify the co-owners.
 - e) Because of the regulatory timelines for approval, review of the application will occur immediately upon making the determination that the application is complete.

C. ROW Applications Crossing Over Multiple Tracts

- 1) Applicants may submit one ROW application with supporting documentation for multiple contiguous tracts if applicable.
- 2) BIA will issue one grant for all of the tracts traversed by the ROW for the infrastructure project if applicable.

D. Maintenance

- 1) ROW uses listed in 25 CFR 169.5(a) include the right to access the ROW to manage vegetation, inspect, maintain, and repair equipment, and conduct other activities that are necessary to maintain the ROW use.
- 2) Applicants may refer to a request to change technology from underground copper telephone line to underground fiber optic line as a “maintenance activity.” However, 25 CFR 169.127(c) identifies this as an example of a new use of a ROW that is within the same scope as the original ROW and not a maintenance activity.

E. New ROW Use Within or Overlapping an Existing ROW

- 1) Grantees may use all or a portion of an existing ROW for a use not specified in the original grant of the existing ROW only if it is within the same scope of the use specified in the original grant of the existing ROW.
- 2) If a grantee proposes to use all or a portion of an existing ROW for a use not specified and not within the same scope of the original ROW and the new use will not require ground disturbance, the grantee must request an amendment to the existing ROW.
- 3) If a grantee proposes to use all or a portion of an existing ROW for a use not specified and not within the same scope of the original ROW and the new use will require ground disturbance, the grantee must request a new ROW.
- 4) Applicants that are not the grantee of the ROW may need an assignment of an existing ROW or a new ROW.
- 5) In accordance with 25 CFR § 169.128, BIA may grant a new ROW within or overlapping an existing ROW if:
 - a) The applicant follows the procedures and requirements to obtain a new ROW; and
 - b) The ROW does not interfere with the use or purpose of the existing ROW and the applicant has obtained the consent of the existing ROW grantee. The existing ROW grantee may not unreasonably withhold consent.

F. Amendments

- 1) If the amendment changes the scope of the original ROW and the new use requires ground disturbance, the grantee will need to submit a new ROW application.
- 2) If the amendment changes the scope of the original ROW and the new use will not require any ground disturbance, the amendment can be reviewed and processed.
- 3) Review and verify any amendments requiring compliance with consent requirements in 25 CFR § 169.107.

G. Assignments

- 1) If the assignment is a result of a corporate merger, acquisition, or transfer by operation of law, then the assignee is excluded from these requirements, except that the assignee needs to provide an original copy of the assignment for recording (25 CFR 169.207(c)), and it must be recorded within 30 days.

- a) The grant of easement or Tribal Resolution should be reviewed to identify if the assignment still requires consent even if it meets the corporate merger, acquisition, or transfer by operation of law regulatory criteria.
- 2) Review the original ROW for express assignment language and applicability. Identify if the existing ROW language “expressly states” (direct and distinctly stated) that the grantee can assign the grant and under what conditions. If the existing language does not contain such language, the approval of the assignment must follow the regulations.
- 3) Verify that the grantee/assignee has: complied with the conditions of the grant; provided the BIA with a notice of any violations, if any; submitted a new bond; and obtained landowners’ consent, and possible compensation requirements, prior to BIA approval and recording.

H. Partial Assignments

- 1) Realty staff will review the purpose of the partial assignment and/or determine if a ROW application should be submitted. A partial assignment may be used to authorize another third party to utilize an existing, approved grant of easement under certain conditions (25 CFR § 169.127(a)). A partial assignment of ROWs will be reviewed and processed using the same standard assignment procedures discussed above.
- 2) Review if the partial assignment’s purpose/use is consistent with the original grant of easement’s purpose/use. If it is identified that the partial assignment purpose is different and requires any ground disturbance, Realty staff will notify the assignee to obtain a new ROW.
- 3) Review the grant of easement to identify any conditions and/or obligations that are reoccurring such as payment, and if applicable, ensure the partial assignment addresses if the assignor (grantee) or assignee is the responsible party.
- 4) Confirm that the partial assignment of a ROW adequately identifies the segment of the ROW that is being assigned for recordation purposes.

I. Providing Copies of ROW and Lease Documents and/or Title research

- 1) It is very important to verify the purpose of the original grant through examination of the original documents to confirm existing grant stipulations regarding amendments or assignments.
- 2) Grants for ROWs approved under 25 CFR Part 169 are provided to applicants. Therefore, applicants who operate and maintain ROWs should have original grants of ROWs. However, agencies may discover that current holders of ROWs may have difficulty referencing approved ROWs for the BIA to identify and to provide guidance upon.
- 3) If BIA’s reasonable search of existing ROWs yields no records and the applicant is unable to also provide proof of an existing ROW approved under 25 CFR 169, the applicant may need to make a new application for ROWs
- 4) Tribes and Individual landowners may request copies of ROWs or leases that cross the lands they have an ownership interest in.

- 5) Companies or third parties requesting copies of ROWs or leases may need to be directed to make a request under the Freedom of Information Act (FOIA) where appropriate.

4. Roles and Responsibilities

- A. **Director, BIA (DBIA)** is responsible for ensuring that appropriate organizational arrangements, resources, and personnel are available to implement and maintain the BIA's Realty program. The DBIA serves as the Senior Accountable Official for this program and has primary responsibility for implementing and executing BIA programs in accordance with statute, regulation, and Departmental policy.
- B. **Deputy Bureau Director (DBD), Field Operations, BIA** is responsible for overseeing the Regional Directors (RDs) and disseminating policy relevant to the regions.
- C. **DBD, Office of Trust Services (OTS), BIA** is responsible for ensuring that statutory and regulatory timetables for ROW and lease applications are met, and that guidance is available to regional and BIA agency staff tasked with processing ROW and lease applications; initiating periodic program reviews of regional and agency programs; and assisting in the development and dissemination of trust resource policy to the RDs.
- D. **Division Chief, Division of Real Estate Services (DRES), OTS** is responsible for overall policy and guidance development within the division, including establishing Realty program policies and standards to comply with statutory and regulatory requirements; day-to-day oversight of the Realty program; ensuring technical assistance and training is provided to BIA regions as needed; conducting program reviews; and managing BIA's federal reporting requirements as they relate to the Realty program.
- E. **Regional Director (RD)** serves as the Senior Accountable Official for the Realty program in their respective region and is responsible for reviewing and acting on any ROW and lease applications that are not otherwise delegated to the BIA agency level. An RD is responsible for ensuring that policy guidance is available and followed by regional and agency staff.
- F. **BIA Agency Superintendent** is responsible for managing their respective organization's Realty program compliance in day-to-day operations and coordinating reviews of ROW and lease applications. Superintendents are responsible for implementing Realty responsibilities at the appropriate level as re-delegated by the DBD Field Operations or RD. Such delegation will only be made when the BIA agency or program office has appropriate expertise on staff or are otherwise readily available.

G. Regional Realty Officer is responsible for reviewing ROW and lease applications that are not otherwise tasked to the BIA agency level and providing technical assistance throughout this process to the appropriate Superintendent as needed.

Approval

Darryl LaCounte Digitally signed by Darryl LaCounte
Date: 2024.04.04 15:00:20 -04'00' _____ 4/4/24
Darryl LaCounte Date
Director, Bureau of Indian Affairs